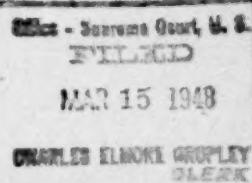


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IN THE

## Supreme Court of the United States

OCTOBER TERM, 1947

NO. 610.

POLAND COAL COMPANY, a Corporation,  
Petitioner,

v.

HILLMAN COAL & COKE COMPANY,  
a Corporation, Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF PENNSYLVANIA.

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**ARGUMENT.**

If we clearly interpret the Rules of this Court, the Petition for Certiorari herein presents no basis whatever for the allowance of the Writ. That being so, we do not propose to burden the Court with a lengthy answering Brief.

In substance, the case in the Courts of the Commonwealth of Pennsylvania involved principles of real property over which those State Courts have complete and final jurisdiction. The application of the rule against perpetuities is certainly not a question of such great public importance as to move this Court to examine into the propriety of the decision thereon of the Supreme

Court of Pennsylvania; nor is the question of whether an option to purchase real estate has been duly exercised because the optionee initiated his exercise thereof by using the language:

"We are desirous of exercising our option  
\* \* \* ." (R. 274 a, 193 a)

On this latter point the finding of the Chancellor, affirmed by the Supreme Court of Pennsylvania (R. 332) is certainly conclusive. (357 Pa. 535; 55 A 2d 414)

This leaves only the question of whether the construction by the Supreme Court of Pennsylvania of a statute of the Commonwealth of Pennsylvania deprived the Petitioner of a substantial Federal right. In 1927, the Pennsylvania Legislature enacted a statute allowing appeals from awards in arbitration proceedings and establishing the procedure in such appeals. (Act of April 25, 1927, PL 381, 5 Purdon Stats. § 161) Petitioner's complaint herein is that the procedure of that statute was not complied with, in that the so-called arbitrator did not hold a formal hearing or take the sworn testimony of witnesses, but made his award on the basis of his own knowledge and investigation. The Supreme Court of Pennsylvania and the trial court both held that, although the parties hereto in their contract used the word "arbitrator," in fact it was not a contract for arbitration, but a contract for appraisal, and that the aforementioned Arbitration Act was inapplicable (R. 334-335, 119 a).

Does this decision of the Supreme Court of Pennsylvania constitute a violation of the following prohibition of the Fourteenth Amendment of the United States Constitution that: " \* \* \* \* nor shall any State de-

prive any person of life, liberty or property without due process of law"? Plainly not, and that destroys any vestige of merit in this application for certiorari.

The prohibition of the Fourteenth Amendment has been uniformly held not to apply to judicial action of the highest court of a state, and, therefore, irrespective of the propriety of the specific judicial decision involved, the Fourteenth Amendment is not violated.

*Arrowsmith v. Harmoning*, 118 U.S. 194;  
*Central Land Co. of West Virginia v. Laidley*,  
159 U.S. 103;  
*Neblett v. Carpenter*, 305 U.S. 297.

The complaint here is that the Supreme Court of Pennsylvania held that Petitioner is not entitled to the benefit of the Pennsylvania Arbitration Act of 1927. That Act does not purport to outlaw contracts for appraisal and, in fact, a previous statute attempting to do that very thing was properly held invalid.

*Adinolfi v. Hazlett*, 242 Pa. 25, 88 A 869.

The decision of the Supreme Court of Pennsylvania here was simply to the effect that the contract in the case called for an appraisal and not for an arbitration, even though the person selected to appraise was called an "arbitrator"; and that such person, an admittedly competent mining engineer, selected jointly by both parties because of his skill as such, properly based his award as to the remaining recoverable coal in the leased premises and the value thereof upon his knowledge and upon his personal investigation.

This Court has uniformly held that it will adopt the construction placed by the highest Court of a particular State on a statute of that State.

*Nesmith v. Sheldon*, 48 U.S. 812;  
*Meister v. Moore*, 96 U.S. 76;  
*Gatewood v. North Carolina*, 203 U.S. 531;  
*Price v. People of Illinois*, 238 U.S. 446;  
*Morehead v. People of New York*, 298 U.S. 587;  
*Madden v. Com. of Kentucky*, 309 U.S. 83;  
*General Trading Co. v. State Tax Commission of Iowa*, 322 U.S. 335.

The very case cited by Petitioner on page 20 of its Brief, viz., *Omaha v. Omaha Water Company*, 218 U.S. 180, recognizes the established distinction between appraisal and arbitration, and, far from giving any comfort to Petitioner, that decision is a complete answer for Respondent as to the propriety of the decision of the Supreme Court of Pennsylvania.

The Petition herein should be denied.

Respectfully submitted,

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